IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re PATENT application of:

Applicant(s): Birkenbach et al.
Serial No: 10/715,962
Filed: November 18, 2003
Title: DEVICE, SYSTEM AND METHOD FOR INTEGRATING DIFFERENT MEDICALLY APPLICABLE APPARATUSES

Examiner: Matthew J. Kasztejna
Art Unit: 3739

Docket No. SCHWP0184USA

REPLY BRIEF UNDER 37 CFR 41.41

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The undersigned submits this Reply Brief in response to the Examiner's Answer, mailed November 12, 2009. As the Examiner's Answer includes new grounds of rejection, the Reply Brief maintains the present appeal by responding to those new grounds of rejection in addition to further establishing why the pending rejections should be reversed.

Status of Claims

The status of the claims has not changed since the filing of the Appeal Brief. As set forth in the Appeal Brief, claims 2, 3, 6, 9, 10, 20, 22 and 24-28 are pending. Claims 1, 4, 5, 7, 8, 11-19, 21 and 23 have been canceled without prejudice or disclaimer of the subject matter contained therein. Claims 2, 3, 6, 9, 10, 20, 22 and 24-28 stand finally rejected and are the subject of this appeal. A correct copy of the claims 2, 3, 6, 9, 10, 20, 22 and 24-28 was reproduced in the Claims Appendix filed in connection with the Appeal Brief.

Grounds of Rejection to Be Reviewed on Appeal[1]

A. Claims 2-3, 6, 9, 20, 22 and 26-28 stand finally rejected under 35 U.S.C. § 112, 1st ¶, as failing to comply with the written description requirement.[2]

B. Claims 2-3, 6, 9-10 and 26-28 stand finally rejected under 35 U.S.C. § 112, 1st ¶, as failing to comply with the enablement requirement.[3]

C. Claims 2-3, 6, 9-10, 20, 22 and 24-28 stand finally rejected under 35 U.S.C. § 102(e) as being unpatentable over U.S. Patent No. 5,788,688 (***Bauer***).

[1] Including the new grounds of rejection presented in the Examiner's Answer.

[2] The prior final rejection only finally rejected claims 20 and 28 under 35 U.S.C. § 112, 1st ¶, as failing to comply with the written description requirement.

[3] The prior final rejection only finally rejected claim 27 under 35 U.S.C. § 112, 1st ¶, as failing to comply with the enablement requirement.

Arguments[4]

The rejections advanced by the Examiner are improper and should be reversed for at least the following reasons.

Summary of Claimed Subject Matter

The present application recognizes problems that exist with so-called integrated systems for simultaneously operating a multitude of different medical apparatuses. Problems exist generally that either all of the systems have to be obtained from a ***single manufacturer***, and, therefore, apparatuses and systems that may already be available cannot easily be integrated, or that different input and output specifications make integrating new apparatuses into a system more difficult, since ***manufacturer-specific protocols*** are used, such that the software has to be altered if one apparatus is to be interconnected with another, and since ***different manufacturers often choose different operating designs***. [p. 2, ln. 18-26].

In other words, the present application recognizes difficulties with integrating different medical apparatuses because different manufacturers typically use different manufacturer-specific protocols for the various pieces of medical equipment that they offer. While this might make sense from a manufacturer's standpoint to encourage user's to purchase various pieces of a equipment from the same manufacturer to keep

[4] The following arguments are presented in response to the new rejections provided in the Examiner's Answer, as well as to respond to other assertions made in the Examiner's Answer. In the event the Examiner further clarifies the rejections of any claims that have not been argued separately, Applicant reserves the right to argue separately such claims.

the manufacturer-specific protocol the same for the various pieces of equipment, this presents difficulty to users who might wish to employ different medical devices from different manufacturers, such that the devices make use of different manufacturer-specific protocols.

As set forth in the Appeal Brief, the claimed subject matter solves this problem by providing a system for integrating different medical devices having different manufacturer-specific protocols and associated command protocol software and a central control unit/central interface unit configured to couple to input and output connections of the control apparatuses having different manufacturer-specific command protocols. The claimed system provides a simpler and more cost-effective solution to integrating different medical devices having different command protocols without having to determine, download or directly interface with any special protocol for the manufacturer of the given control apparatus. [p. 4, ln. 4-26; p. 8, ln. 7-17].

A. Claims 2-3, 6, 9-10, 20, 22 and 26-28 stand finally rejected under 35 U.S.C. § 112, 1st ¶.

Claims 2-3, 6, 9-10, 20, 22 and 26-28 stand finally rejected under 35 U.S.C. § 112, 1st ¶, as failing to comply with the written description requirement. For at least the following reasons discussed below, this rejection should be reversed.

Written Description

A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The Examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The Examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *In re Wertheim*, 541 F.2d at 263, 191 USPQ at 97. In rejecting a claim, the Examiner must set forth express findings of fact regarding the above analysis which support the lack of written description conclusion.

In addition, as set forth in MPEP 2163, "the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement." (Emphasis added).

Claim 20

Claim 20 recites a system that includes, *inter alia*, a central control unit configured to couple to input and output connections of at least two medically applicable instruments via at least two control apparatuses having different manufacturer-specific command protocols and associated command protocol software. The central control unit is configured to receive output signals and ***relay received input***

signals without conversion of the received input signals into the command protocols of the at least two medically applicable apparatuses.

The Examiner's rejection is directed to the claim 20 recitation of "wherein the central control unit is configured to receive output signals and relay received input signals without conversion of the received input signals to command protocols of the at least two medically applicable apparatuses."[5]

In rejecting claim 20, the Examiner points to what he perceives to be a statement in the specification that contradicts claim 20. In particular, the Examiner points to page 10, lines 21-24 of the application, which states the following, "one or more processors 21 ***can*** be provided in the central control unit 2, to convert the control signals coming from the screen 4 into formats corresponding to the respective control apparatus 3a-3d, which ***can*** be forwarded to the corresponding control apparatus 3a-3d via the lines 5a-5d." (Emphasis added).

In focusing on this single passage of the application, the Examiner ignores other significant portions of the application.[6] For example, at page 4, lines 4-26, the application discloses the following.

> Only the signals of the control apparatus of the medical instruments that are necessary for interaction with a user are ***forwarded*** to the central control unit or ***forwarded*** from the central control unit to the individual control apparatus. ***Therefore, each individual apparatus can be used, without modifying the software or***

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[5] Examiner's Answer, page 4.

[6] "It is now well established that a satisfactory description may be in the claims or any other portion of the originally filed specification." MPEP 2163.

hardware, as it was designed to be by the respective manufacturer. The medical instrument coupled to the individual control apparatus can continue to be controlled as specified in the corresponding control apparatus by the manufacturer. In accordance with the invention, the display of images, signals or operational conditions of the medical instruments important for the user, such as output signals of the control apparatus, are detected by the central control unit and displayed on a central display, such as for example a flat screen. One or more control apparatuses, and therefore medical instruments, can be selected using a central input device and signals for determining or altering the operational mode or functionality can be transmitted on by the central input device to said control apparatus of the respective medical instruments via the central control unit.

In this way, the often large number of monitors and control apparatuses in the operating area, often having different operational designs, can be reduced. For example, a single monitor including a central input device for realizing a unified operational design can be realized. ***Different control apparatuses of different medical instruments can be controlled without, for example, rewriting the software used in the control apparatus or having to predetermine a special protocol for the manufacturer of a control apparatus, for communicating with the central control unit.*** (Emphasis added).

In addition, at page 8, lines 7-17, the application discloses the following.

In accordance with another aspect, the invention relates to a method for operating at least two medical instruments or apparatuses simultaneously, in parallel or sequentially, wherein ***the output signals of the medical instruments or of the control apparatuses coupled to the medical instruments are transmitted to a central control unit. The control unit can transmit input signals to the medical instruments or the control apparatuses coupled to the respective medical instruments.*** The output signals of the medical instruments or of the control apparatuses coupled to them can be transmitted from the central control unit to a central display device. ***Data or signals can be transmitted from a central input unit to the central control unit, which forwards to one or more control apparatuses or directly to the medical instruments.*** (Emphasis added).

Of course, these cited passages also must be viewed in conjunction with the application's recognition of problems related to integrating multiple medical apparatuses from different manufacturers with different manufacturer-specific protocols. As noted above, the application at page 2, lines 18-26 provides the following discussion.

> In the case of the known, so-called integrated systems for simultaneously operating a multitude of different apparatuses, the problem exists generally that either all the systems have to be obtained from a ***single manufacturer*** and thus apparatuses and systems such as may already be available cannot easily be integrated, or that different input and output specifications make integrating new apparatuses into a system more difficult, since ***manufacturer-specific protocols*** are used, such that the software has to be altered if one apparatus is to be interconnected with another, and since ***different manufacturers often choose different operating designs***. (Emphasis added).

As such, it is respectfully submitted that the Examiner has failed to view the specification as a whole. His reliance on page 10, lines 21-14, only deals with one embodiment, ***which is indicated as being optional*** based on use of the word "can". By way of example, the above-quoted portions of the application show possession of the invention recited in claim 20.

The Examiner appears to place significant emphasis on the assertion that the exact words "without conversion" do not appear in the application. However, as noted above, the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.

In addition, on page 11 of the Examiner's Answer, the Examiner points to page 4, line 27 - page 5, line 4 (referred to by the Examiner as paragraph [0014]) of the present application for further detail on conversion of "input signals." However, it is respectfully submitted that this reliance is misplaced because this portion of the application discusses processing video signals of different formats, where the video signals are ***outputted*** by the different control apparatuses associated with the various medical devices.

For at least these reasons, the rejection should be reversed.

Claim 22

The above remarks with respect to claim 20 are equally applicable to dependent claim 22, and therefore incorporated herein as if fully set forth. For at least these reasons, the rejection of dependent claim 22 should be reversed.

Dependent claim 22 recites "wherein the common output display device is a single central input and output display device comprised of a single touch screen display." The new grounds of rejection presented in the Examiner's Answer fails to address any written description deficiency of claim 22 besides grouping it together with independent claim 20. Therefore, the Examiner has not met the burden discussed above with respect to establishing a rejection based on written description. For at least this additional reason, the rejection of claim 22 should be reversed.

Claim 27

The above remarks with respect to claim 20 are equally applicable to claim 27, and therefore incorporated herein as if fully set forth.

Claim 27 recites a central control unit configured to couple to input and output connections of at least two medically applicable instruments via at least two control apparatuses having different manufacturer-specific command protocols and associated command protocol software. The central control unit is configured to receive input signals from an input device and ***forward*** the received input signals to the at least two control apparatuses without controlling the medically applicable control apparatuses.

The Examiner's rejection is directed to the claim 27 recitation of wherein the central control unit is configured to receive input signals from the at least one input device and ***forward*** the received input signals to the at least two control apparatuses without controlling the medically applicable apparatuses." (Emphasis added).

As noted above with respect to claim 20, the Examiner's rejection appears to be based on a perceived contradiction between the claim 27 recitation and the disclosure of the optional embodiment on page 10, lines 21-14, of the present application. As shown above, the Examiner's reliance on only this passage of the present application ignores other passages that demonstrate possession of the invention recited in claim 27. For example, the application discussion at page 4, lines 3-7, is instructive and shows possession of the claimed invention.

> Only the signals of the control apparatus of the medical instruments that are necessary for interaction with a user are ***forwarded*** to the central control unit or ***forwarded*** from the central control unit to the individual control apparatus. Therefore,

each individual apparatus can be used, without modifying the software or hardware, as it was designed to be by the respective manufacturer. (Emphasis added).

Also, disclosures in the present application, for example, at page 2, lines 18-26, at page 4, lines 4-26, and at page 8, lines 7-17, (see passages reproduced above) provide other disclosures that support claim 27 and that show possession of the invention recited in claim 27.

As with the rejection of claim 20, this rejection relies on paragraph [0034] of the present application. In this portion of the Office Action, the Examiner equates transfer of signals with controlling. However, the application as a whole, including the exemplary disclosures in the present application at page 4, lines 4-26, and at page 8, lines 7-17, (see passages reproduced above), describes embodiments in which the central control unit "***forwards***" or "***transfers***" or "***relays***" signals from the input device to the control apparatuses. The ***control apparatuses associated with the various medically applicable apparatuses then control the medically applicable apparatuses*** based on the signals forwarded, relayed or transferred by the central control unit.

This operation can be contrasted with one where a control unit interfaces with a special manufacturer-specific command protocol and associated command protocol software. The claimed operation allows for interaction with different medical instruments via their control apparatuses without having to rewrite or interface with the

software used in the control apparatus, and without having to predetermine a special protocol for the manufacturer of the given control apparatus.

For at least these reasons, the rejection of claim 27 should be reversed.

Claim 28

The above remarks with respect to claim 20 and claim 27 are equally applicable to claim 28, and therefore incorporated herein as if fully set forth.

Dependent claim 28 recites "wherein the central control unit is configured to exchange input and output signals with the control apparatuses without conversion of the command protocol software associated with the control apparatuses."

As noted above, the Examiner's rejection appears to be based on a perceived contradiction between the claim 28 recitation and the disclosure of the optional embodiment on page 10, lines 21-14, of the present application. As shown above, the Examiner's reliance on only this passage of the present application ignores other passages that demonstrate possession of the invention recited in claim 28. For example, disclosures in the present application at page 2, lines 18-26, at page 4, lines 4-26, and at page 8, lines 7-17, (see passages reproduced above) illustrate other embodiments that support claim 28 and that show possession of the invention recited in claim 28. For at least these reasons, the rejections should be reversed.

Claims 2-3, 6, 9-10, and 26

The above remarks with respect to claim 20 and claim 27 are equally applicable to claims 2-3, 6, 9-10, and 26, and therefore incorporated herein as if fully set forth. For at least these reasons, the rejections of dependent claims 2-3, 6, 9-10, and 26 should be reversed.

Each of dependent claims 2, 3, 6, 9, 10 and 26 recite additional features beyond what is recited in independent claim 27. The new grounds of rejection presented in the Examiner's Answer fails to address any written description deficiency of each of dependent claims 2-3, 6, 9-10, and 26 besides grouping them together with independent claim 27. Therefore, the Examiner has not met the burden discussed above with respect to establishing a rejection based on written description. For at least this additional reason, the rejection of claims 2-3, 6, 9-10 and 26 should be reversed.

B. Claims *2-3, 6, 9-10, and 26*-28 stand finally rejected under 35 U.S.C. § 112, 1st ¶.

Enablement

Any analysis of whether a particular claim is supported by the disclosure in an application requires a determination of whether that disclosure, when filed, contained sufficient information regarding the subject matter of the claims as to enable one skilled in the pertinent art to make and use the claimed invention. The standard for determining whether the specification meets the enablement requirement was cast in

the Supreme Court decision of *Mineral Separation v. Hyde*, 242 U.S. 261, 270 (1916), which postured the question: is the experimentation needed to practice the invention undue or unreasonable? That standard is still the one to be applied. *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988).

In order to make a rejection, the Examiner has the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention. *In re Wright*, 999 F.2d 1557, 1562, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993) (examiner must provide a reasonable explanation as to why the scope of protection provided by a claim is not adequately enabled by the disclosure). A specification disclosure that contains a teaching of the manner and process of making and using an invention in terms which correspond in scope to those used in describing and defining the subject matter sought to be patented must be taken as being in compliance with the enablement requirement of 35 U.S.C. 112, first paragraph, unless there is a reason to doubt the objective truth of the statements contained therein which must be relied on for enabling support. Assuming that sufficient reason for such doubt exists, a rejection for failure to teach how to make and/or use will be proper on that basis. *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). As stated by the court, "it is incumbent upon the Patent Office, whenever a rejection on this basis is made, to explain why it doubts the truth or accuracy of any statement in a supporting disclosure and to back up assertions of its own with acceptable evidence or reasoning which is inconsistent with the contested statement. Otherwise, there would be no need for the applicant to go to

the trouble and expense of supporting his presumptively accurate disclosure." 439 F.2d at 224, 169 USPQ at 370.

Claim 27

Claim 27 stands finally rejected under 35 U.S.C. § 112, 1st ¶, as failing to comply with the enablement requirement. For at least the following reasons discussed below, this rejection should be reversed.

At the outset, it is noted that the application discusses the structure and connections associated with the claimed system (see, for example, Figure 1). Also, as is discussed below, the application, for example, at page 2, lines 18-26, at page 4, lines 4-26, and at page 8, lines 7-17, (see passages reproduced above), the application discusses various manners of operation of the claimed device.

The Examiner asserts that the "claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention."[7] In particular, the Examiner appears to object to the claim 27 recitation of "wherein the central control unit is configured to receive input signals from the at least one input device and forward the received input signals to the at least two control apparatuses without controlling the medically applicable apparatuses." As with the § 112, 1st ¶ rejections above, this rejection relies on paragraph [0034] of the present application. In

[7] Examiner's Answer, page 6.

this portion of the Office Action, the Examiner equates transfer of signals with controlling. However, the application as a whole, including the exemplary disclosures in the present application at page 2, lines 18-26, at page 4, lines 4-26, and at page 8, lines 7-17, (see passages reproduced above), describes embodiments in which the central control unit "***forwards***" or "***transfers***" or "***relays***" signals from the input device to the control apparatuses. The ***control apparatuses associated with the various medically applicable apparatuses then control the medically applicable apparatuses based on the signals forwarded, relayed or transferred by the central control unit***.

This operation can be contrasted with one where a control unit interfaces with a special manufacturer-specific command protocol and associated command protocol software. The claimed operation allows for interaction with different medical instruments via their control apparatuses without having to rewrite or interface with the software used in the control apparatus, and without having to predetermine a special protocol for the manufacturer of the given control apparatus.

For at least these reasons, it is respectfully submitted that the invention recited in claim 27 is enabled and the rejection should be reversed.

Claims 2-3, 6, 9-10, and 26

The above remarks with respect to claim 27 are equally applicable to claim 28, and therefore incorporated herein as if fully set forth. For at least these reasons, the rejections of dependent claims 2-3, 6, 9-10, and 26 should be reversed. Each of

dependent claims 2, 3, 6, 9, 10 and 26 recite additional features beyond what is recited in independent claim 27. The new grounds of rejection presented in the Examiner's Answer fails to address any enablement deficiency of each of dependent claims 2-3, 6, 9-10, and 26 besides grouping them together with independent claim 27. Therefore, the Examiner has not met the burden discussed above with respect to establishing a rejection based on enablement. For at least this additional reason, the rejection of claims 2-3, 6, 9-10 and 26 should be reversed.

C. Anticipation Rejection of Claims 2-3, 6, 9-10, 20, 22 and 24-28

The pending anticipation rejections should be reversed because ***Bauer*** fails to disclose all of the elements of the claimed invention, as recited in the various claims, arranged as required by the various claims.

Again, as pointed out in MPEP 2131 in order to anticipate an invention recited in a particular claim, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." Further, [t]he elements must be arranged as required by the claim." "[A] prior art reference - in order to anticipate under 35 U.S.C. § 102 - must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements "arranged as in the claim." Net Moneyin, Inc. v. Verisign, Inc., 545 F.3d 1359 (Fed. Cir. 2008), *citing* Connell V. Sears, Roebuck & Co., 722 F.2d 1542, 1548 (Fed. Cir. 1983).

As noted in the Appeal Brief, ***Bauer*** fails to make any mention of working with multiple control apparatuses having different manufacturer-specific command protocols and associated command protocol software.

In support of his position, the Examiner, at page 13 of the Examiner's Answer, asserts that ***Bauer's*** disclosure of a "central control unit 66 configured to couple to input and output connections of at least two medically applicable instruments 54, 64, 74, 60 via at least two control apparatuses having 44, 46, 48,50" is sufficient to anticipate the claimed system including a central control unit that is configured to couple to input and output connections of at least two medically applicable instruments via at least two control apparatuses having different manufacturer-specific command protocols and associated command protocol software. In support of this assertion, the Examiner points to ***Bauer*** at Figure 1 and col. 3, lines 1-20)." Again, for convenience of reference, col. 3, lines 1-20 of ***Bauer*** are reproduced below.

> The command and control center includes a surgeon's control panel operatively positioned at the surgeon's operating station. The surgeon's control panel includes display means for displaying data relating to status of the pieces of surgical equipment and input means for receiving commands entered manually. A plurality of communication interface circuits are included, one for each piece of surgical equipment, for transmitting data representing status of the associated surgical control head and for receiving remote commands for driving the associated surgical instrument. A central controller is operatively connected to each communication interface circuit and the surgeon's control panel. The central controller transmits to the pieces of surgical equipment commands entered manually on the surgeon's control panel and transmits to the surgeon's control panel status of the surgical control heads for display on the display means to provide a surgeon direct command and control of the pieces of surgical equipment located in the non-sterile area remote from the surgeon's operating station.

As can be seen, the referenced portion of ***Bauer*** is silent with respect to the claimed recitation of a system including a central control unit that is configured to couple to input and output connections of at least two medically applicable instruments via at least two control apparatuses having different manufacturer-specific command protocols and associated command protocol software. As such, ***Bauer*** fails to support the anticipation rejections set forth by the Examiner.

Inherency

Further, on page 13 of the Examiner's Answer, the Examiner appears to be relying on the theory of inherency to support the rejection of the various claims. For example, the Examiner asserts, "[a]s seen in Figure 2, Bauer shows the use of a variety of different medical instruments, such as a laser 62, an endoscope 64 etc. ***These instruments inherently have different manufacturer-specific command protocols and software*** as they are different working instruments. An endoscope cannot operate under command protocols used to operate and control a laser or insufflation device. Likewise, a laser cannot operate with software intended to be used for operation and control of an endoscope."" (Emphasis added).

The Examiner's assertion is misplaced for at least two reasons. First, there is no evidence of record to support the Examiner's assertion that different instruments (presumably even from the same manufacturer) inherently have different manufacturer-specific command protocols. In fact, the only discussion on the topic of different manufacturer-specific command protocols appears in the present application and

contradicts the Examiner's assertion. As discussed above, the present application recognizes problems with prior art systems when not all of the medical instruments come from the same manufacturer. not support the Examiner's assertion.

Second, the Examiner's above-quoted assertion appears to be relying on the theory of inherency to support the rejections of the various claims. If that is the case, ***the Examiner has not met his burden with respect to establishing a rejection based on the theory of inherency***.

In making a rejection based on inherency, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish inherency of that result or characteristic." *In re Rijckaert*, 28 USPQ2d 1955, 1957 (Fed. Cir 1993). To establish inherency, the extrinsic evidence must make clear that the ***missing descriptive matter is necessarily present*** in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, ***may not be established by probabilities or possibilities***. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). (Emphasis added).

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

Not only did the Examiner fail to meet his burden with respect to inherency, ***Bauer*** does not inherently disclose the claimed central control unit that is configured to

couple to input and output connections of at least two medically applicable instruments via at least two control apparatuses having different manufacturer-specific command protocols and associated command protocol software. ***Bauer*** is silent with respect to this claimed provision.

For at least these reasons, in addition to those provided in the Appeal Brief with respect to the various claims, the anticipation rejections 2-3, 6, 9-10, 20, 22 and 24-28 should be reversed.

Interview Summary

The brief telephone interview on November 3, 2009 between the Examiner and the undersigned is accurately summarized in the Interview Summary document included with the Examiner's Answer.

Conclusion

In view of the foregoing, it is respectfully submitted that the claims are patentable over the applied art and that the final rejection should be reversed.

Should a petition for an extension of time be necessary for the timely filing of this brief (or if such a petition has been made and an additional extension is necessary) petition is hereby made and the Commissioner is authorized to charge any fees to Deposit Account no. 18-0988, Order No. SCHWP0184USA.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR, L.L.P.

By: s/Jason A. Worgull/
Jason A. Worgull, Reg. No. 48,044

1621 Euclid Avenue, 19th Floor
Cleveland, Ohio 44115
216-621-1113

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